UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,432	01/06/2004	Claude R. Allen	3830-13	3219

23117 7590 04/14/2005

NIXON & VANDERHYE, PC
1100 N GLEBE ROAD
8TH FLOOR
ARLINGTON, VA 22201-4714

EXAMINER	
SHRIVER II, JAMES A	

ART UNIT	PAPER NUMBER
3618	

DATE MAILED: 04/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/751,432
Filing Date: January 06, 2004
Appellant(s): ALLEN ET AL.

Alan M. Kagen
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on April 1, 2005.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 23-29 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

US 2,405,636	BECK	8-1946
US 4,576,107	BRASHER	3-1986
US 5,873,431	BUTLER et al.	2-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 23, 26-27 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Beck (US Patent 2,405,636). Beck discloses a hauler vehicle (10) for mining operations comprising a vehicle frame (11) coupleable with a source of motive power (45); and a conveyor (20) centrally disposed and coupled with the vehicle frame, wherein the vehicle frame and conveyor define a receiving end and a discharge end (See Fig. 1), and wherein the discharge end has a substantially fixed height (the specification does not disclose the discharge end of the

conveyor being height adjustable); **[claim 26]** wherein the discharge end comprises a discharge boom integrated into the vehicle frame defining a one-piece frame construction (the drawings and specification does not disclose the discharge end of the conveyor being height adjustable, so Examiner has construed Beck's vehicle as only having a one-piece frame construction).

Regarding claims 27 and 29, under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986). In this case, Applicant has only claimed the method of constructing a hauler vehicle possessing all the components set forth in the previous apparatus claims, therefore, Beck inherently teaches constructing a hauler vehicle having the claimed components.

Claims 23-24 and 27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Brasher (US Patent 4,576,107). Brasher discloses a hauler vehicle (10) for mining operations comprising a vehicle frame (12) coupleable with a source of motive power (this in an inherent component because without a source of motive power the vehicle could not operate); and a conveyor (50) centrally disposed and coupled with the vehicle frame, wherein the vehicle frame and conveyor define a receiving end (14) and a discharge end (16), and wherein the discharge end has a substantially fixed height (The discharge end is adjustable, however, it remains at a fixed height set by the operator); **[claim 24]** further comprising a full load indicator mechanism (See Figs. 2-3 and column 3, lines 10-27) at least partially adjacent the discharge end, the full load indicator mechanism providing an indication when the conveyor is substantially full.

Regarding claims 27 and 28, under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986). In this case, Applicant has only claimed the method of constructing a hauler vehicle possessing all the components set forth in the previous apparatus claims, therefore, Brasher inherently teaches constructing a hauler vehicle having the claimed components.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brasher (US Patent 4,576,107) in view of Butler et al. (US Patent 5,873,431). Brasher discloses the hauler vehicle as set forth above including a motor, but does not disclose wherein the source of motive power comprises the motor connected to a vehicle-mounted battery. Butler et al. discloses a hauler vehicle wherein the source of motive power comprises a motor (26) connected to a vehicle-mounted battery (27). At the time of the invention, it would have been obvious to a person of ordinary skill in this art to provide a vehicle mounted battery to supply electricity to the motor disclosed in Brasher in view of the teaching of Butler et al. The motivation for doing so would have been to allow the vehicle to be completely autonomous, so that a separate electric power source is not needed to be connected to the hauler vehicle to provide electrical power for the motors.

(11) Response to Argument

On page 12 of Appellant's Argument, Appellant argues that Beck does not disclose the discharge end having a substantially fixed height, merely based on the fact that the Beck reference does not disclose the nature of the discharge end in the Specification. Examiner disagrees with Appellant's argument because the specification in the Beck reference does not set forth structural elements to hinge the discharge end of the conveyor and the drawings disclose the discharge end of the conveyor being fixed relative to the frame of the vehicle (See Figures 2 and 3, which shows no hinges or structural elements for adjusting the discharge end of the conveyor), which would clearly establish that Beck anticipates the claims as currently set forth. Figure 3 shows a front view of the hauler vehicle including an open view of the structural elements of the conveyor. The shaft of the conveyor, which has a supporting pin 61 on its end, is located below cross plate 30, which extends between the sidewalls. Additionally, pin 61 is held securely in aperture 62 of the gear casing 59. This configuration would preclude any movement of the discharge end of the conveyor relative to the frame of the hauler vehicle.

Additionally on page 13, Appellant argues that the Beck reference in column 1, line 54, states that an endless chain flight conveyor enables the coal to be unloaded mechanically from one end of the vehicle "in the usual manner", then Appellant states that it would be reasonable to assume that those of ordinary skill in the art would interpret the "usual manner" as a conveyor including a height adjustable discharge end. Examiner disagrees with Appellant's assumption that the phrase "usual manner" would be interpreted as meaning the conveyor has a height

adjustable discharge end. Nowhere in the prior art does it state that the "usual manner" means that the conveyor has a height adjustable discharge end.

On page 14 of Appellant's arguments, Appellant argues, "those of ordinary skill in the art would readily understand that the claimed "substantially fixed height" of the discharge end precludes any adjustability of the discharge end." Examiner disagrees with this statement completely. How can any adjustability be precluded (which means none at all) when the claims state a "substantially fixed height"? Clearly applicant is reading limitations into the claims that are not there. During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). The court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." The court found that applicant was advocating the latter, i.e., the impermissible importation of subject matter from the specification into the claim.). See also In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Being able to fix the discharge end of the conveyor in a stable, fixed position relative to the frame of the hauler vehicle, as taught in the Brasher reference, clearly meets the claim limitation of having a "substantially fixed height." The Court has held that "the term "substantially" is often used in conjunction with

another term to describe a particular characteristic of the claimed invention. It is a board term." *In re Nehrenberg*, 280 F.2d 161, 126 USPQ 383 (CCPA 1960). Consequently, Examiner has construed the claim term "substantially fixed height" as allowing for a discharge end of the conveyor to be adjustable to the operator at specific times, and then to be fixed relative to the vehicle frame during operation of the vehicle. After the operator sets the height of the discharge end of the conveyor, it has a substantially fixed height. Nowhere in Applicant's claims does it require that the discharge end of the conveyor be fixed always (no vertical adjustment) relative to the hauler vehicle's frame.

On page 16 of Appellant's arguments, Appellant contends that the Bulter reference does not correct the deficiencies of the Brasher reference, specifically that Brasher does not disclose a discharge end having a substantially fixed height. As set forth above, Examiner believes and maintains that both the Beck and Brasher references do teach a discharge end of the conveyor having a substantially fixed height.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

4/11/05

J. Allen Shriver
Examiner
Art Unit 3618

JAS
April 11, 2005

Conferees
Leslie Morris, SPE AU 3611
Frank Vanaman, Primary AU 3618

NIXON & VANDERHYE, PC
1100 N GLEBE ROAD
8TH FLOOR
ARLINGTON, VA 22201-4714